

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5934 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS OF MADHUSUDAN S MODI

Versus

G S R T C & ORS.

Appearance:

MR VG JANI for Petitioners

MS MAYA S DESAI, MR MD PANDYA for Respondent No.1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, now since deceased represented by his legal heirs and representatives, an officer of the Gujarat State Road Transport Corporation, filed this writ petition, challenging thereunder the order of the respondent annexure 'A', dated 30th September 1983, under which he was ordered to be prematurely retired with

immediate effect. This order was subsequently modified and the premature retirement of the petitioner was given effect to from 15th October 1983, under Annexure 'I'. This order, annexure 'I' has also been challenged by the petitioner in this Special Civil Application.

3. Briefly, the facts of the case are that the petitioner joined the services of the Bombay State Road Transport Corporation on 5.10.59 as Depot Manager, Gr.C. On reorganization of the States the petitioner was allocated to the service of the Gujarat State Road Transport Corporation as Depot Manager Gr.C. Thereafter the petitioner was promoted to the post of Depot Manager Gr.B on 26th January 1965. The posts of Depot Manager Gr.C and Gr.B are class III posts. On 14th June 1971 the petitioner was promoted as Depot Manager Gr.A which is a class II post. The next promotion of the petitioner was that of Senior Depot Manager, Gr.A, which has been given to him vide order dated 19th June 1979. The premature retirement of the petitioner from the service has been made pursuant to proviso to Service Regulation 51 and the Corporation Resolution No.6457 dated 30.9.83.

4. Reply to this Special Civil Application has been filed by the respondent. The material which has been considered to form the opinion against the petitioner to retire him prematurely has been given out therein.

5. The learned counsel for the petitioner contended that the day on which the order annexure 'A' has been made and given effect to, the petitioner has not attained the age of 50 years and as such, this order was arbitrary. It has next been contended that the action of the respondent to prematurely retire the petitioner is wholly arbitrary and unjustified. The petitioner has an unblemished service record to his credit for all the years except a few adversities. Carrying further this contention, the learned counsel for the petitioner contended that the petitioner has been given promotion to the post of Senior Depot Manager 'A' in the year 1979 and therefore the penalties which were awarded to him before his promotion stood washed off. Not only this but he was permitted to cross efficiency bar also by the Corporation. It has further been contended that no adverse remarks were communicated to the petitioner for the last 10 years. Summing up the contention, the learned counsel for the petitioner submitted that it cannot be said that the petitioner has altogether rendered himself to be unfit to be retained in the services. The learned counsel for the petitioner further submitted that though five departmental inquiries were

initiated against the petitioner in which there were charges of misappropriation or embezzlement of the property of Corporation, those charges were not found proved in the inquiries though for other minor charges, the petitioner was given minor penalties. In view of these facts, the learned counsel for the petitioner contended that the report of the Committee that his integrity is doubtful, cannot be taken into consideration. In support of his contention, the learned counsel for the petitioner has placed reliance on the decision of Supreme Court in the case of Baidyanath Mahapatra v. State of Orissa & Anr., reported in (1989)4 SCC 664.

6. On the other hand, the learned counsel for the respondent-Corporation urged that the Corporation has power to order for premature retirement of the petitioner. That power follows from Regulation 51. The Committee has considered the entire service record of the petitioner and thereafter formed opinion that it is not in the public interest of continuing the service of the petitioner. There were five punishments in the service record of the petitioner as well as his integrity has also been reported to be doubtful. In the presence of five punishments as well as the report that the petitioner's integrity is still doubtful, the decision of the Committee recommending for premature retirement of the petitioner cannot be said to be arbitrary or perverse. It has next been contended by the learned counsel for the respondent-Corporation that the petitioner has not come up with the case of any malafides. Lastly it has been urged that in the matter of premature retirement of the employees of the Corporation made in public interest, the same is not subject to judicial review by this Court.

7. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

8. The facts which are not in dispute are that the petitioner was promoted as Senior Depot Manager, Gr.A in the year 1979. The petitioner was also allowed to cross Efficiency Bar, but none of the parties have given out the date on which he was allowed to cross Efficiency Bar and from which date. The petitioner was punished in five departmental inquiries though he has been given minor penalty. The orders of penalty have been made on 24th February 1977, 21st September 1982, 11th April 1983 and 7th May 1983. Neither the petitioner nor the respondents have given out the date of order of penalty in the fifth

inquiry. The petitioner has not challenged any of the orders of the penalty aforesaid. It is not in dispute that in the Departmental Inquiry, there were serious charges regarding his involvement in number of default cases pertaining to dishonesty, involving monetary affairs. It is also not in dispute between the parties that so far as the charges in the inquiry about the default cases pertaining to dishonesty involving monetary affairs, the petitioner has been exonerated. In the aforesaid factual matrix of the case, now I proceed to decide the grounds of challenge raised by the learned counsel for the petitioner.

9. So far as the first contention of the learned counsel for the petitioner is concerned, it is suffice to say that though initially he raised this contention, but during the course of argument he has given up this contention. In view of the fact that the learned counsel for the petitioner has given up this contention, it is not necessary to go on this question. Otherwise also, I am satisfied that this contention is devoid of any substance. It is true that the day on which the first order of premature retirement was made the petitioner has not attained the age of 50 years, but that mistake has been realised by the Corporation itself and the order No.SB 282/83 dated 30th September 1983 was modified and the petitioner was ordered to be prematurely retired with effect from 15th October 1983. He was ordered to be treated on duty till 15th October 1983 and also has been paid the salary. It is not in dispute that on 15th October 1983, the petitioner has already attained the age of 50 years. So the ground which has been raised by the petitioner's counsel that the petitioner could not have been retired prematurely on 30th September 1983, is devoid of any substance. The next contention of the learned counsel for the petitioner that the five adversities, i.e. the minor penalties could not have been taken into consideration as the same stood washed off as he has been given promotion in the year 1979 as well as he was allowed to cross Efficiency Bar, is also devoid of any substance. The petitioner was given promotion in the year 1979 and on that date only one penalty was there, i.e. of the date 24th February 1977. So far as the other three penalties are concerned, there is no dispute and on the other hand it is admitted case of the petitioner that they are of the year 1983. The day on which the petitioner was given promotion, the three other penalties were not there and as such in the present case, the theory of washing off all adverse material on promotion is not attracted or put in service by the learned counsel for the petitioner. So far as the

fifth penalty is concerned, as stated earlier, the petitioner has conveniently avoided to give the dates as well as has not produced a copy of the order. It is true that the respondent has also not given the date of the fifth penalty, but nevertheless, it was for the petitioner to give out the date as initial burden lies on him to make out his own case. For non production of the aforesaid document, it is a case where inference has to be drawn that the fifth penalty was also of the year later than 1979. So to conclude, there were five punishments in the service record of the petitioner. So far as the question of crossing of Efficiency Bar is concerned, it is suffice to say that the petitioner has not given out the date on which and the date from which he was allowed to cross Efficiency Bar. In absence of these material facts, it is difficult to infer and conclude that the petitioner was allowed to cross Efficiency Bar after these penalties. Contrary to it, adverse inference has to be drawn for non giving of those dates from which the petitioner was allowed to cross Efficiency Bar earlier to passing of the order of penalty. As the adversity, i.e punishment in the service record of the petitioner are of the date later than the date of promotion and crossing of Efficiency Bar, the doctrine of washing off the adverse service record, put forward by the learned counsel for the petitioner, is not available in the present case.

10. In the case of Vaidyanath Mahapatra v. State of Orissa (supra), the appellant therein was promoted to the higher post on the basis of merit and selection and on that promotion the adverse entries contained in the service record were held to have lost their significance. Those adverse entries were of the remote past and thereafter as stated earlier, promotion has been made. Adverse entries in that case of the year 1969-70 to 1972-73 and 1975-76 were communicated in lot in the year 1978. The entries for the year 1981-82, 1982-83 though were there, but the representation against those were pending. In the case of State of Orissa & Ors. v. Ram Chandra Das, reported in (1996)5 SCC 331, the Hon'ble Supreme Court held that the adverse remarks although followed by promotion can nonetheless be taken into consideration. This is a case of three Bench Judges and the same was also the matter of Orissa Service Code. The earlier decision was of the Bench of two Judges and in the later decision, though the earlier decision was not cited but the later one is a decision of large Bench and recent from the point of view of time. The decision of the Government to compulsorily retire its servant is to certain extent subjective. The Hon'ble Supreme Court, in

the case of State of Orissa & Ors. v. Ram Chandra Das (supra), held that the Government is empowered and would be entitled to compulsorily retire a Government servant in public interest with a view to improve efficiency of the administration or to weed out people who are of doubtful integrity or corrupt but sufficient evidence was not available to take disciplinary action in accordance with the Rules so as to inculcate a sense of discipline in the service. But the Government, before taking the decision to retire a Government employee compulsorily from the service has to consider the entire service record of the Government servant including the latest reports. Compulsory retirement is not a punishment. The employee compulsorily retired is entitled to all the pensionary benefits. It has further been held by the Hon'ble Supreme Court that the record of the pending inquiry on conduct also would be material. Though minor penalty may be imposed on given facts and circumstances for the act of misconduct, nevertheless it remains part of the record for overall consideration to retire a Government servant compulsorily. The object always is public interest. The material question is whether the entire record of service was considered or not? It is not for the Court to see whether the decision of the Government to compulsorily retire the Government servant is justified or not. It is for the Government to consider the same and take a proper decision in that behalf, though the Government has to consider the entire record of service of the concerned employee. The Hon'ble Supreme Court has further held that merely because a promotion has been given after adverse entries were made, cannot be a ground to note that compulsory retirement of the Government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. That selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the Government servant in service after he attained the required length of service or qualified period of service for pension. In these case before the Hon'ble Supreme Court the adverse entries were made only after promotion and not earlier to promotion.

11. In the present case also, as stated earlier, admittedly three punishments have been given to the petitioner after his promotion. In the inquiries there

were serious charges against the petitioner of dereliction pertaining to dishonesty involving monetary affairs. It is a different matter that for want of sufficient evidence those charges were not found to be proved in the inquiry, but nevertheless that was the part of inquiry and as held by the Hon'ble Supreme Court in the case of State of Orissa v. Ram Chandra Das (supra), record of inquiry may be relevant consideration for the Government or the officer to decide whether the concerned Government servant should be compulsorily prematurely retired or not? In the case before Hon'ble Supreme Court those inquiries resulted ultimately in imposing of minor penalty, which is case here also. Record of inquiry on conduct of the petitioner would be material. The decision to compulsorily retire the petitioner has been taken after carefully examining the relevant material/information regarding integrity etc., inquiries were also made in respect of the petitioner and the committee has found and observed that his integrity was very much doubtful and that he was involved in number of matters involving monetary affairs. In the facts of the present case, the decision of the Committee to prematurely retire the petitioner in public interest cannot be said to be perverse or arbitrary. There was sufficient material available on record against the petitioner and there was also other material in the form of report of the Committee etc. The opinion formed by the Committee to compulsorily retire the petitioner is reasonable. On the basis of that record a man of ordinary prudence could have taken a decision in the public interest to retire the petitioner prematurely. The net result of the aforesaid discussion is that the petitioner has no case whatsoever on merits and interference of this Court is not called for in the order impugned in this Special Civil Application.

12. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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